

AMENDED IN SENATE JUNE 26, 2003

AMENDED IN SENATE JUNE 16, 2003

AMENDED IN ASSEMBLY MAY 5, 2003

AMENDED IN ASSEMBLY APRIL 24, 2003

AMENDED IN ASSEMBLY APRIL 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1370

Introduced by Assembly Member Yee

February 21, 2003

An act to amend Section 4094 of the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1370, as amended, Yee. Mental health: community treatment facilities: seclusion and restraints.

Under existing law, community treatment facilities are residential facilities that are licensed by the State Department of Social Services and the State Department of Mental Health to provide residential care and mental health treatment services to children in a group setting, and that have the capacity to provide secure containment.

Existing law requires the State Department of Mental Health to adopt regulations establishing program standards for any facility licensed as a community treatment facility. These regulations are required to

include standards for treatment staffing and for the use of psychotropic medication, discipline, and restraints.

This bill would, until January 1, 2007, prohibit the department from requiring 24-hour onsite nursing staff at community treatment facilities, but would require these facilities to retain at least one full-time, or full-time equivalent, registered nurse onsite, in specified circumstances, to maintain other nursing staff to be available on call, and to have present at all times at least one staff member who is trained in providing first aid and other emergency services. This bill would also authorize the department to adopt emergency regulations to implement these provisions.

~~The bill would also require that community treatment facility program compliance requirements provide for the use of alternative concepts, methods, or procedures by community treatment facilities, and would authorize the State Department of Mental Health to approve these alternatives, as specified, upon the request of a community treatment facility.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4094 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 4094. (a) The State Department of Mental Health shall
- 4 establish, by regulations adopted at the earliest possible date, but
- 5 no later than December 31, 1994, program standards for any
- 6 facility licensed as a community treatment facility. This section
- 7 shall apply only to community treatment facilities described in this
- 8 subdivision.
- 9 (b) A certification of compliance issued by the State
- 10 Department of Mental Health shall be a condition of licensure for
- 11 the community treatment facility by the State Department of
- 12 Social Services. The department may, upon the request of a county,
- 13 delegate the certification and supervision of a community
- 14 treatment facility to the county department of mental health.
- 15 (c) The State Department of Mental Health shall adopt
- 16 regulations to include, but not be limited to, the following:



1 (1) Procedures by which the Director of Mental Health shall
2 certify that a facility requesting licensure as a community
3 treatment facility pursuant to Section 1502 of the Health and
4 Safety Code is in compliance with program standards established
5 pursuant to this section.

6 (2) Procedures by which the Director of Mental Health shall
7 deny a certification to a facility or decertify a facility that is
8 licensed as a community treatment facility pursuant to Section
9 1502 of the Health and Safety Code, but no longer complying with
10 program standards established pursuant to this section, in
11 accordance with Chapter 5 (commencing with Section 11500) of
12 Part 1 of Division 3 of Title 2 of the Government Code.

13 (3) Provisions for site visits by the State Department of Mental
14 Health for the purpose of reviewing a facility's compliance with
15 program standards established pursuant to this section.

16 (4) Provisions for the community care licensing staff of the
17 State Department of Social Services to report to the State
18 Department of Mental Health when there is reasonable cause to
19 believe that a community treatment facility is not in compliance
20 with program standards established pursuant to this section.

21 (5) Provisions for the State Department of Mental Health to
22 provide consultation and documentation to the State Department
23 of Social Services in any administrative proceeding regarding
24 denial, suspension, or revocation of a community treatment
25 facility license.

26 (d) The standards adopted by regulations pursuant to
27 subdivision (a) shall include, but not be limited to, standards for
28 treatment staffing and for the use of psychotropic medication,
29 discipline, and restraints in the facilities. The standards shall also
30 meet the requirements of Section 4094.5.

31 (e) (1) Until January 1, 2007, all of the following are
32 applicable:

33 (A) A community treatment facility shall not be required by the
34 State Department of Mental Health to have 24-hour onsite licensed
35 nursing staff, but shall retain at least one full-time, or full-time
36 equivalent, registered nurse onsite if both of the following are
37 applicable:

38 (i) The facility does not use mechanical restraint.

39 (ii) The facility only admits children who have been assessed,
40 at the point of admission, by a licensed primary care provider and

1 a licensed psychiatrist, who have concluded that the children do
2 not require medical services that require 24-hour nursing
3 coverage. For purposes of this section, a “primary care provider”
4 includes a person defined in Section 14254, or a nurse practitioner
5 who has the responsibility for providing initial and primary care
6 to patients, for maintaining the continuity of care, and for initiating
7 referral for specialist care.

8 (B) Other medical or nursing staff shall be available on call to
9 provide appropriate services, when necessary, ~~consistent with~~
10 ~~federal law.~~ *within one hour.*

11 (C) At least one staff member who is trained in first aid and
12 cardiopulmonary resuscitation, and in emergency intervention
13 techniques and methods approved by the Community Care
14 Licensing Division of the State Department of Social Services,
15 shall be present at all times.

16 (2) The State Department of Mental Health may adopt
17 emergency regulations as necessary to implement this subdivision.
18 The adoption of these regulations shall be deemed to be an
19 emergency and necessary for the immediate preservation of the
20 public peace, health and safety, and general welfare. The
21 regulations shall be exempt from review by the Office of
22 Administrative Law and shall become effective immediately upon
23 filing with the Secretary of State. The regulations shall not remain
24 in effect more than 180 days unless the adopting agency complies
25 with all the provisions of Chapter 3.5 (commencing with Section
26 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
27 as required by subdivision (e) of Section 11346.1 of the
28 Government Code.

29 ~~(f) Community treatment facility program compliance~~
30 ~~requirements shall provide for the use of alternative concepts,~~
31 ~~methods, or procedures by community treatment facilities. The~~
32 ~~State Department of Mental Health may approve a request by a~~
33 ~~community treatment facility to utilize alternative concepts,~~
34 ~~methods, or procedures if these alternatives are carried out with~~
35 ~~provision for the safe and adequate care of clients.~~

36 ~~(g)~~

37 (f) During the initial public comment period for the adoption of
38 the regulations required by this section, the community care
39 facility licensing regulations proposed by the State Department of

1 Social Services and the program standards proposed by the State
2 Department of Mental Health shall be presented simultaneously.

3 ~~(h)~~

4 (g) A minor shall be admitted to a community treatment facility
5 only if the requirements of Section 4094.5 and either of the
6 following conditions are met:

7 (1) The minor is within the jurisdiction of the juvenile court,
8 and has made voluntary application for mental health services
9 pursuant to Section 6552.

10 (2) Informed consent is given by a parent, guardian,
11 conservator, or other person having custody of the minor.

12 ~~(i)~~

13 (h) Any minor admitted to a community treatment facility shall
14 have the same due process rights afforded to a minor who may be
15 admitted to a state hospital, pursuant to the holding in *In re Roger*
16 *S.* (1977) 19 ~~Cal.3d~~ *Cal.3d* 921. Minors who are wards or
17 dependents of the court and to whom this subdivision applies shall
18 be afforded due process in accordance with Section 6552 and
19 related case law, including *In re Michael E.* (1975) 15 *Cal.3d* 183.
20 Regulations adopted pursuant to Section 4094 shall specify the
21 procedures for ensuring these rights, including provisions for
22 notification of rights and the time and place of hearings.

23 ~~(j)~~

24 (i) Notwithstanding Section 13340 of the Government Code,
25 the sum of forty-five thousand dollars (\$45,000) is hereby
26 appropriated annually from the General Fund to the State
27 Department of Mental Health for one personnel year to carry out
28 the provisions of this section.

29 SEC. 2. This act is an urgency statute necessary for the
30 immediate preservation of the public peace, health, or safety
31 within the meaning of Article IV of the Constitution and shall go
32 into immediate effect. The facts constituting the necessity are:

33 In order to ensure that community treatment facilities are able
34 to provide uninterrupted residential and mental health treatment
35 services to seriously emotionally disturbed children, by removing
36 financial burdens that are imposed by existing nurse staffing
37 requirements, it is necessary that this act take effect immediately.